

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 2/2/2021

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OREN BARZILAY, as President of UNIFORMED :
EMTS, PARAMEDICS AND FIRE INSPECTORS, :
LOCAL 2507, DC 37, AFSCME; UNIFORMED EMTS, :
PARAMEDICS, AND FIRE INSPECTORS, LOCAL :
2507, DC 37, AFSCME ELIZABETH BONILLA; :
ALEXANDER NUNEZ; MEGAN PFEIFFER, and JOHN :
RUGEN, :

20-cv-4452 (LJL)

ORDER

Plaintiffs, :

-v- :

THE CITY OF NEW YORK, DANIEL NIGRO, as :
Commissioner of the Fire Department of the City of New :
York, and CARLOS VELEZ, :

Defendants. :

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LEWIS J. LIMAN, United States District Judge:

Plaintiffs move to compel production of documents related to an investigation by the Fire Department of the City of New York (“FDNY”) into their participation in media activities regarding COVID-19. Dkt. No. 29. These activities allegedly occurred in March and April 2020. Plaintiffs, employees of the FDNY, allege that they have been subject to adverse treatment by the FDNY as a result of these activities. Defendants resist the production of such documents on the grounds that they are irrelevant and that they are shielded by the law enforcement and deliberative process privileges. Dkt. No. 30. They assert that the complaint should be construed to be limited to the suspension of Plaintiffs in April 2020, and that their production obligations should correspondingly be limited to documents related to that suspension. Defendants do not argue the documents are protected by the attorney client privilege or the attorney work product doctrine and have waived any such argument. Defendants have offered to produce the documents to the Court for in camera review.

The motion is granted in part and denied in part. Defendants’ reading of the complaint and their production obligations are too narrow. The complaint is not limited to the April 2020 suspensions. Defendants are obligated to produce requested discovery to the extent that it is nonprivileged and relevant to a claim or defense. Fed. R. Civ. P. 26(b). The motion to compel is granted to the extent Plaintiffs seek documents or information related to any investigation of Plaintiffs regarding their contacts with members of the media in March or April 2020 about COVID-19, or any adverse action taken against them as a result of those contacts. To the extent

that Plaintiffs ask the Court now to rule that the deliberative process or law enforcement privileges do not apply, that request is denied without prejudice. Defendants shall make their production by February 9, 2021. To the extent that Defendants withhold any documents or information on grounds of the deliberative process or law enforcement privileges, Defendants shall serve a privilege log on Plaintiffs on or before February 9, 2021, and the parties shall attempt to meet and confer thereafter regarding any assertions of privilege before bringing any disputed issues to the Court.

SO ORDERED.

Dated: February 2, 2021
New York, New York

A handwritten signature in black ink, appearing to read 'L. Liman', written over a horizontal line.

LEWIS J. LIMAN
United States District Judge